



C.R.P.(PD).No.3291 of 2019
and C.M.P.No.21371 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

CORAM

THE HONOURABLE **MR.JUSTICE N.SESHASAYEE**

C.R.P.(PD).No.3291 of 2019
and C.M.P.No.21371 of 2019

B.Padmanaban

... Petitioner

Vs.

R.Balasubramaniam

... Respondent

Prayer: Petition filed under Article 227 of Constitution of India, seeking to set aside the fair and decreetal order dated 19.06.2019 in I.A.No.390 of 2018 in O.S.No.57 of 2016 on the file of the District Munsif, Tambaram.

For Petitioner : Mr.T.Jayalakshmi
for M/s.Paul and Paul

For Respondent : No Appearance



C.R.P.(PD).No.3291 of 2019
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ORDER

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The plaintiff has laid a suit for permanent injunction which is resisted by the defendant. Earlier, the plaintiff had filed I.A.No.156 of 2017 for withdrawing the suit under Order XXIII Rule 1(3) of C.P.C. This was dismissed by the trial Court vide its order dated 08.11.2017, essentially on the ground that the suit does not suffer from any formal defect as to warrant a withdrawal of the suit.

2.Subsequently, the plaintiff has filed an application in I.A.No.390 of 2018, seeking a mandatory injunction against the defendant.

3.The setting is that while the plaintiff claims possession to the suit property, the defendant appears to have pleaded that earlier there was an agreement of sale between the parties pursuant to which, the defendant had put up a compound wall, some time in 2003. Now it is for removing this compound wall, the plaintiff has taken out the present application for amending the plaint.



C.R.P.(PD).No.3291 of 2019
and C.M.P.No.21371 of 2019

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4.The trial Court has taken a view that it is required to be considered whether the construction made by the defendant is illegal and on that footing, it proceeded to allow the application vide its order dated 19.06.2019. This order is in challenge.

5.Heard the learned counsel and also perused the papers.

6.The only issue is when was the compound wall constructed, but then, the defendant definitely will have an opportunity to file his written statement once the amendment is allowed to be carried out. This Court does not find that the order of the trial Court in allowing the amendment is perverse to warrant any interference under Article 227 of Constitution of India.

7.This Court does not find merit in this revision and the same is dismissed.

No Costs. Consequently, the connected miscellaneous petition is closed.

07.03.2023

Anu
Index : yes / no
Internet : yes / no
Speaking / non speaking



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C.R.P.(PD).No.3291 of 2019
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N.SESHASAYEE

Anu

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C.R.P.(PD).No.3291 of 2019
and C.M.P.No.21371 of 2019